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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2183 OF 2007
WITH
NOTICE OF MOTION NO.572 OF 2007
IN
WRIT PETITION NO.2183 OF 2007

Greater Bombay Co-op. Bank Ltd. Petitioner
versus
M/s.Ganesh Benzoplast Ltd. & ors. Respondents

Mr.Prasad Das i/by Goenka Law Associates for petitioner.

Mr.E.P.Bharucha, Sr.Counsel a/w Simil Purohit with Rajini Divekar and Kejal Rasputra i/by Little & Co. for respondents 1 to 5.

Mr.Pradeep Jadhav, AGP.

CORAM : A.M.KHANWILKAR, J.

DATE : 10th December 2007

PC :

1. Heard counsel for the parties. Rule. Counsel for the respective contesting Respondents waive service. Rule made returnable forthwith, by consent.

2. This petition essentially questions the correctness of the order passed by the Divisional Joint Registrar dated 6th September 2007. By

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that order, the revisional authority not only admitted the revision application but proceeded to stay the execution of the attachment of the premises belonging to applicants 3 and 4 being Flat No.102, White House, S.B.Marg, J.B.Nagar, Andheri (East) Mumbai; and also stayed the further proceedings which are founded on the recovery certificate operating in favour of the petitioner bank.

3. The first contention raised on behalf of the petitioner bank is that the revisional authority could not have entertained the revision application in absence of compliance of the statutory requirement of 50% pre-deposit of the recoverable dues. Besides, the petitioners argued that no relief could be granted in favour of the applicant (respondents 1 to 5 herein), in particular the applicants 3 and 4 (respondents 3 and 4 herein), as they are party to the counter guarantees given in relation to the obligation of respondents 1 and 2 who are the guarantors for the principal borrower respondent no.7. Counsel for the respondents 1 to 5, on the other hand, would contend that no fault can be found with the interim order passed by the revisional authority which is impugned in this petition. Counsel for

the respondent then contends that the counter guarantee which is referred to by the petitioners does not create obligation against all the respondents 3 to 5 in relation to the transaction for which respondents 1 and 2 have stood guarantors for the principal borrower respondent no.7. The counsel further contends that in fact the respondents 3 to 5 have discharged their obligation under the counter guarantee.

4. In my opinion, the petitioners ought to succeed in this petition. This is so because the revisional authority has not adverted itself to the core issue of the statutory requirement of pre-deposit in terms of Section 154(2A) of the Act. It is only thereafter the revisional authority could have assumed jurisdiction to pass further orders including interim order as would be warranted in the revision application. For the time being, it is not necessary to examine the question on merits which has found favour with the revisional authority to grant relief in favour of respondents 1 to 5. Suffice it to observe that the impugned judgement and order deserves to be set aside keeping all questions open to be decided by the revisional authority afresh after the principal issue as to whether

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the revision could be entertained in absence of compliance of statutory requirement of pre-deposit in terms of Section 154(2A) is decided one way or the other. That issue will have to be decided by the revisional authority in the first instance on its own merits in accordance with law. In the event the said issue is answered and decided in favour of the respondents-applicants, the revisional authority may proceed to consider the matter on merits. The revisional authority shall decide the issue regarding maintainability of the revision application within two weeks from today.

5. The parties shall appear before the revisional authority on 17th December 2007 at 11.00 a.m. in his office. This order will be treated as notice to the parties to appear before the revisional authority on the time and place as aforesaid. The revisional authority shall proceed to decide the issue of maintainability of the revision in view of the observations made in the earlier part of this order. That be done on the same day or such other day to ensure that the revision is decided on the point of maintainability of revision on or before 26th December 207. Till such time, no precipitative

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steps shall be taken by the petitioner bank in respect of the stated premises being Flat No.102 referred to above. It is further ordered that in the event the question of maintainability of revision application is decided against the applicants-respondents 1 to 5, the petitioners shall maintain status-quo for a period of two weeks from the date of intimation of order to the concerned respondents.

6. The petition is disposed of on the above terms. In view of the above, the Notice of Motion is disposed of.

7. In the event the respondent no.6 is no more functioning as the revisional authority, the parties shall appear before the officer who has been given charge or already nominated as Divisional Joint Registrar. The respondents to ascertain that position before hand and will not be heard to make a grievance that they were not aware about the new official appointed in place of respondent no.6 as Divisional Joint Registrar to decide the revision application.

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(A.M.KHANWILKAR, J.)